

COMMISSIONERS  
GARY PIERCE - Chairman  
BOB STUMP  
SANDRA D. KENNEDY  
PAUL NEWMAN  
BRENDA BURNS

OPEN MEETING ITEM  
ORIGINAL



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ARIZONA CORPORATION COMMISSION RECEIVED

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AZ CORP COMMISSION  
DOCKET CONTROL

DATE: DECEMBER 21, 2011

DOCKET NO.: RR-03639A-11-0245

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Marc E. Stern. The recommendation has been filed in the form of an Opinion and Order on:

UNION PACIFIC RAILROAD COMPANY  
(UPGRADE CROSSING)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

DECEMBER 30, 2011

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

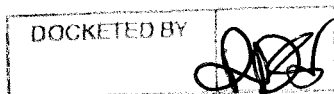
JANUARY 10, 2012 and JANUARY 11, 2012

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

Arizona Corporation Commission

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DEC 21 2011



ERNEST G. JOHNSON  
EXECUTIVE DIRECTOR

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This document is available in alternative formats by contacting Shaylin Bernal, ADA Coordinator, voice phone number 602-542-3931, E-mail [SABernal@azcc.gov](mailto:SABernal@azcc.gov)

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 GARY PIERCE - Chairman  
4 BOB STUMP  
5 SANDRA D. KENNEDY  
6 PAUL NEWMAN  
7 BRENDA BURNS

8 IN THE MATTER OF THE APPLICATION OF  
9 THE ARIZONA DEPARTMENT OF  
10 TRANSPORTATION TO UPGRADE AN  
11 EXISTING CROSSING OF THE UNION PACIFIC  
12 RAILROAD AT LITCHFIELD ROAD IN THE  
13 CITY OF GOODYEAR, MARICOPA COUNTY,  
14 ARIZONA, USDOT NO. 741-784-A.

DOCKET NO. RR-03639A-11-0245

DECISION NO. \_\_\_\_\_

**OPINION AND ORDER**

11 DATE OF HEARING: August 29, 2011

12 PLACE OF HEARING: Phoenix, Arizona

13 ADMINISTRATIVE LAW JUDGE: Marc E. Stern

14 APPEARANCES: Mr. James Redpath, OFFICE OF THE ATTORNEY  
15 GENERAL, Transportation Section, on behalf of the  
16 Arizona Department of Transportation;

17 Mr. Terrance L. Sims, BEAUGUREAU, ZUKOWSKI  
& HANCOCK, P.C., on behalf of the Union Pacific  
18 Railroad Company; and

19 Ms. Bridget Humphrey and Mr. Charles Hains, Staff  
Attorneys, Legal Division, on behalf of the Safety  
Division of the Arizona Corporation Commission.

20 **BY THE COMMISSION:**

21 On June 16, 2011, the Arizona Department of Transportation ("ADOT") filed with the  
22 Arizona Corporation Commission ("Commission") an application for approval for the Union Pacific  
23 Railroad ("Railroad") to upgrade an existing crossing at Litchfield Road in the City of Goodyear  
24 ("City"), Maricopa County, Arizona at USDOT No. 741-784-A ("Application").

25 On June 28, 2011, by Procedural Order, a hearing was scheduled on August 29, 2011.

26 On August 12, 2011, the Staff Memorandum was filed recommending approval of the  
27 Application.

28 On August 26, 2011, ADOT filed certification that notice of the proceeding was provided in

1 accordance with the Commission's Procedural Order.

2 On August 29, 2011, a full public hearing was convened before a duly authorized  
3 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. ADOT, the  
4 Railroad and the Commission's Safety Division Railroad Safety Section ("Staff") were present with  
5 counsel. At the conclusion of the hearing, the matter was taken under advisement pending  
6 submission of a Recommended Opinion and Order to the Commission.

7 \* \* \* \* \*

8 Having considered the entire record herein and being fully advised in the premises, the  
9 Commission finds, concludes, and orders that:

#### 10 **FINDINGS OF FACT**

11 1. On June 16, 2011, ADOT filed an Application in which it requested an Opinion and  
12 Order from the Commission approving an agreement between ADOT and the Railroad to upgrade an  
13 existing at-grade crossing at Litchfield Road located in Goodyear at USDOT No. 741-784-A.<sup>1</sup>

14 2. On several occasions during 2006 and 2007, Staff, ADOT and the City conducted  
15 meetings with respect to the proposed improvements at the crossing.

16 3. ADOT is seeking Commission approval to upgrade the existing at-grade crossing at  
17 Litchfield Road, which is a five lane roadway that runs north-south. There are three lanes  
18 southbound and two lanes northbound where the Railroad's tracks intersect with the roadway. The  
19 proposed improvements will replace the existing flashing lights, gates and timber crossing with an  
20 upgrade consisting of a new cantilever for southbound traffic, flashing LED lights and the installation  
21 of a new concrete crossing surface.

22 4. On August 26, 2011, ADOT filed certification that it had provided public notice of the  
23 Application and hearing thereon pursuant to the Commission's Procedural Order by publishing notice  
24 in the *Arizona Business Gazette* and by mailing, by certified U.S. mail, notice to the City and the  
25 Railroad.

26 \_\_\_\_\_  
27 <sup>1</sup> The proposed upgrade of the Litchfield Road crossing was approved by the Commission in Decision No. 69727 (July  
28 30, 2007) as part of the 2007 Annual Array to utilize federal funding pursuant to 23 U.S.C. § 130 ("Section 130") which  
is provided by the Federal Highway Administration ("FHWA") to reimburse ADOT for 100 percent of the cost of the  
project. Section 130 projects are used to eliminate hazards to pedestrians and highway vehicles at public railroad  
crossings which are not primarily for the benefit of the Railroad.

1           5.       The hearing was held as scheduled on August 29, 2011.

2           6.       According to the Staff Memorandum, the area which surrounds the Litchfield Road  
3 crossing consists of land that is zoned for commercial and industrial development.

4           7.       Mr. Armando Lopez, a Railroad Coordinator for ADOT, testified in support of the  
5 Application.

6           8.       Mr. Lopez testified that improvements to the at-grade crossing at Litchfield Road  
7 include the installation of new automatic warning devices, along with the replacement of the old  
8 crossing surface with a new concrete surface. (Tr. 6: 1-5)

9           9.       Mr. Lopez stated that a grade separation study was not conducted because funding is  
10 not available at this time for such construction. (Tr. 7: 1-5)

11          10.       Mr. Lopez testified that the upgrades with LED flashing lights installed on the gates  
12 were standard and similar to other railroad crossings in Arizona and in conformity with the *Manual*  
13 *on Uniform Traffic Control Devices*. (Tr. 7: 17-25)

14          11.       According to Mr. Lopez, the upgrade will be completed within 12 to 15 months  
15 following the effective date of the Commission's Decision. (Tr. 8: 22-25)

16          12.       Mr. Lopez testified further that the crossing would be closed for a brief period to allow  
17 for the installation of the upgrades and the new crossing surface, but there is a nearby public crossing  
18 at Central Avenue in the City which can be used by the traveling public. (Tr. 9: 4-13)

19          13.       Mr. Lopez testified a 2008 ADOT study found 8,400 vehicles used the crossing per  
20 day and that the level of service was LOS B. (Tr. 10: 6-10)

21          14.       According to Mr. Lopez, trains using the Litchfield Road at-grade crossing average  
22 approximately 45 miles per hour. (Tr. 10: 21-25)

23          15.       Mr. Lopez testified that 94.3 percent of the financing for the improvements will be  
24 funded by the FHWA and the additional 5.7 percent will be funded by the City, for a total cost of  
25 \$481,277. (Tr. 11: 9-17)

26          16.       Mr. Lopez testified further that the Railroad will be responsible to maintain the  
27 crossing surface and the automatic signal equipment at the crossing while the City will maintain the  
28 roadway approaches up to the crossing. (Tr. 13: 9-15)

17. Mr. Chris Watson, an Assistant Supervisor and Grade-Crossing Inspector for the Commission, testified that he had prepared the Staff Memorandum which describes the nature of ADOT's proposed improvements at the Litchfield Road at-grade crossing. (Tr. 14-15: 14-3)

18. Mr. Watson stated that no through freight trains utilize the at-grade crossing at Litchfield Road in the City and that it is only used for switching movements. (Tr. 15: 18-23)

19. The Staff Memorandum indicates that FRA records show that only two accidents have occurred at the crossing, one in 1974 and one in 1975, and in each instance only one injury was reported.

20. Mr. Watson further testified that, according to Staff's analysis of the FHWA guidelines with respect to grade separation, the crossing does not experience excessive delays and does not merit construction of a grade-separated crossing. (Tr. 19-20: 21-6)

21. Mr. Watson stated that, according to local school officials, their buses have not experienced excessive delays at the Litchfield Road at-grade crossing either. (Tr. 20: 10-14)

22. According to the Staff Memorandum, the upgrade to the Litchfield Road crossing as proposed by ADOT is consistent with similar crossings in Arizona and will improve public safety.

23. Staff is recommending that the Application be approved.

## CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and over the subject matter of the Application pursuant to Article XV of the Arizona Constitution and A.R.S. §§ 40-336, 40-337 and 40-337.01.

2. Notice of the Application was provided in accordance with the law.

3. Installation of the crossing upgrade is necessary for the public's convenience and safety.

4. Pursuant to A.R.S. §§ 40-336 and 40-337, the Application should be approved as recommended by Staff.

5. After the installation of the crossing upgrades at the at-grade crossing of Litchfield Road, the Railroad should maintain the crossing in accordance with A.A.C. R14-5-104.

...

**ORDER**

IT IS THEREFORE ORDERED that the Arizona Department of Transportation's Application as described herein is hereby approved.

IT IS FURTHER ORDERED that the Union Pacific Railroad shall complete the crossing upgrade as described in the Application within fifteen months of the effective date of this Decision.

IT IS FURTHER ORDERED that the Union Pacific Railroad shall notify the Commission, in writing, within ten days of both the commencement and completion of the crossing upgrade, pursuant to A.A.C. R14-5-104.

IT IS FURTHER ORDERED that upon completion of the crossing upgrade, the Union Pacific Railroad shall maintain the crossing in compliance with A.A.C. R14-5-104.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN \_\_\_\_\_ COMMISSIONER \_\_\_\_\_

COMMISSIONER \_\_\_\_\_ COMMISSIONER \_\_\_\_\_ COMMISSIONER \_\_\_\_\_

IN WITNESS WHEREOF, I, ERNEST G. JOHNSON, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this \_\_\_\_\_ day of \_\_\_\_\_ 2012.

\_\_\_\_\_  
ERNEST G. JOHNSON  
EXECUTIVE DIRECTOR

DISSENT \_\_\_\_\_

DISSENT \_\_\_\_\_

MES:db

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